

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

The Kroger Co.,	:	Case No.: C-1-02 439
	:	
Plaintiff,	:	Judge Beckwith
	:	
:	:	
	:	DEFENDANT’S MOTION
Malease Foods Corp., formerly	:	FOR EXTENSION OF TIME
known as Malese Foods Corp.,	:	
	:	
Defendant.	:	

Pursuant to S.D. Oh. Civ. R. 7.3(a), and for the reasons set forth within the attached memorandum, defendant, Malease Foods Corp., moves the Court for an extension of time to respond to plaintiff’s “Motion to Show Cause, or in the Alternative, for Leave to Request Injunctive Relief” and to file a reply in support of “Defendant’s Motion for Leave to File Motion to Dismiss the Kroger Co.’s Damage Claim”.

Respectfully submitted,

/s/ R. Gary Winters

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Attorneys for Defendant

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SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

The Kroger Co.,	:	Case No.: C-1-02 439
	:	
Plaintiff,	:	Judge Beckwith
	:	
v.	:	
	:	
	:	MEMORANDUM IN SUPPORT OF
	:	DEFENDANT'S MOTION
Malease Foods Corp., formerly	:	FOR EXTENSION OF TIME
known as Malese Foods Corp.,	:	
	:	
Defendant.	:	

Plaintiff has responded to defendant's motion with respect to Kroger Co.'s damage claim, and has contemporaneously filed its Motion to Show Cause or in the Alternative for Leave to Request Injunctive Relief. Defendant wishes to respond, per Rule, to both of these filings, but primary counsel for defendant, Robert Cinque, is on a long-planned two week vacation to Italy, and will not return to the United States until October 6. Defendant respectfully requests that it be granted until October 15, 2004 to file its memorandum in opposition and reply.

Counsel for defendant has requested that plaintiff agree to this extension, and has been advised by Mr. Dennis, co-counsel for plaintiff, that Kroger will not agree to any extension, thus necessitating this motion.

Since the extension defendant seeks is only eight days with respect to its memorandum in opposition, and eighteen days with respect to its reply memorandum, defendant submits

that no party will be prejudiced, and the Court will not be prevented from expeditiously resolving the pending motions.

Respectfully submitted,

/s/ R. Gary Winters

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of October, 2004 a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Gary Winters

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